FILED

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U.S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN THE MATTER OF:

Inspection of the workplace
located at and near

200 West Spring
Gerald, Missouri 63037

under the control or custody of

MFA, Incorporated
d/b/a MFA Feed Mill - GERALD

Case No.

4:17MC00210NAB

APPLICATION FOR ADMINISTRATIVE SEARCH WARRANT UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

TO THE HONORABLE UNITED STATES MAGISTRATE JUDGE:

Kevin Kolesa, a duly authorized Compliance Officer of the St. Louis Area Office, Occupational Safety and Health Administration, United States Department of Labor, hereby applies for an administrative search warrant, pursuant to section 8(a) of the Occupational Safety and Health Act of 1970, 29 U.S.C.A. §§ 651-678, 657(a) (West 2012), hereinafter referred to as the Act, for the inspection, investigation and search of the workplace located at 200 West Spring, Gerald, Missouri 63037 where MFA, Incorporated d/b/a MFA Feed Mill - GERALD is believed to be engaged in feed mill operations and production of prepared feed for animals.

1. The authority for issuance of the administrative search warrant is section 8(a) of the Act and Marshall v. Barlow's, Inc., 436 U.S. 307, 98 S.Ct. 1816 (1978).

2. Sections 8(a)(1) and 8(a)(2) of the Act specifically authorize the Secretary of Labor to make inspections and investigations at any reasonable time, at any plant, factory, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer.

3. Sections 8(a)(1) and 8(a)(2) of the Act are implemented in part by OSHA Instruction CPL 02-00-160 Field Operations Manual (FOM), (hereinafter CPL 02-00-160), Chapter 2, attached hereto as Exhibit A, which directs that programmed inspections be scheduled based on objective or neutral selection criteria and according to national scheduling plans for safety and health or special emphasis programs. Ex. A, CPL 02-00-160, Chap. 2, p. 2-6, IV.H.3. Local Emphasis Programs ("LEPs") are a type of special emphasis program in which one or more area offices of a Region participate. Local emphasis programmed inspections are conducted in accordance with OSHA Instruction CPL 04-00-001, Procedures for Approval of Local Emphasis Programs (hereinafter CPL 04-00-001), attached hereto as Exhibit B. Ex. A, CPL 02-00-160, Chap. 2, p. 2-9, VI.E.

4. CPL 04-00-001 provides that Regional Administrators are authorized to approve LEPs with the concurrence of the Regional Office of the Solicitor. Exhibit B, p. 4, paragraph VIII.B. When an LEP is developed by the Regional Office or when an Area Director submits a request for an LEP to the Regional Office, the Regional Administrator shall develop a Regional CPL Notice for the LEP containing appropriate documentation and rationale for the LEP, and a selection process setting forth neutral criteria to identify establishments for inspection, such as a random numbering system. Ex. B, CPL 04-00-001, pp. 3-4, para. VIII.A.

5. In accordance with CPL 04-00-001, the St. Louis Area Office developed a local emphasis program for the grain handling industry. The Regional Administrator approved the LEP, OSHA Regional Notice CPL 2-14-010C (hereinafter "Notice"), attached hereto as Exhibit C.

6. The Notice applies to those businesses with SIC/NAICS codes SIC 2014/NAICS 311211 (flour mill products), SIC 2044/NAICS 311212 (rice milling), SIC 2048/NAICS 31119 (prepared feed for animals and fowls) and SIC 5153/NAICS 424510 (grain and field beans), believed to be operating within the jurisdiction of the St. Louis Area Office. Ex. C, CPL 2-14-010C, p. 3, Para. II.

7. The Notice provides that any grain handling or storage related activities performed at the establishments in the identified SIC/NAICS codes are subject to inspection. Ex. C, CPL 2-14-010C, p. 5, Para. VII.B.1.i. A master list of Missouri establishments with the identified SIC/NAICS codes and operating within the jurisdiction of the St. Louis Area Office was provided by OSHA's Directorate of Evaluation and Analysis, Office of Statistics. Ex. C, CPL 2-14-010C, p. 5, Para. VII.B.1.ii. The St. Louis Area Office then randomly sorted the establishments on the master list by county, and then by establishment within the counties. Ex. C, CPL 2-14-010C, p. 5, Para. VII.B.1.ii. The Area Office creates inspection cycles from the list of counties by applying Microsoft Excel's Random Sample function to assign a random number to select counties for inspection. Inspection cycles are developed in the same manner until all counties on the master list are identified as a cycle. Ex. C, CPL 2-14-010C, pp. 5-6, Para. VII.B.1.iii. The inspection cycles include all establishments located in each randomly selected county, but the establishments within the cycle may be inspected in any order that makes efficient use of resources. All establishments within a cycle must be inspected prior to initiating a new cycle. Ex. C, CPL 2-14-010C, p. 6, Para. VII.B.1.iii. Establishments that have had a comprehensive safety and health inspection within the past three years will be deleted from each cycle. Ex. C, CPL 2-14-010C, p. 6, Para. VII.B.2.

8. Inspections conducted under this Notice will be joint comprehensive safety and health inspections. Ex. C, CPL 2-14-010C, p. 6, Para. VII.B.3.i. Inspections will include an evaluation of the employer's efforts at adopting protective measures and its efforts toward the abatement of hazards relating to grain handling hazards. Attention will be paid to engulfment hazards and fire/explosion hazards created by combustible dust. Other hazards addressed will include, but are not limited to, noise, confined spaces, machine guarding, and falls. Ex. C, CPL 2-14-010C, p. 6, Para. VII.B.3.iii.

9. MFA, Incorporated d/b/a MFA Feed Mill - GERALD is an establishment that appeared on the master list provided by OSHA's Directorate of Evaluation and Analysis, Office of Statistics. It was not deleted from the establishment list. MFA,

Incorporated d/b/a MFA Feed Mill - GERALD has a SIC code of 2048 and an NAICS code of 311119, which are SIC/NAICS codes covered by this Notice. The St. Louis Area Office has completed two cycles under CPL 2-14-010C. Franklin County was randomly selected as Cycle 3, and MFA, Incorporated d/b/a MFA Feed Mill - GERALD is an establishment located in Franklin County and selected for inspection in Cycle 3.

10. On February 28, 2017, Compliance Officer Kevin Kolesa went to the establishment located at 200 West Spring, Gerald, Missouri 63037 and requested permission to make an inspection. He was denied permission to do so by Stan Thessen, Safety Environmental and Regulatory Manager.

11. It is requested that the warrant authorize a comprehensive safety and health inspection of the operation under the custody and control of MFA, Incorporated d/b/a MFA Feed Mill - GERALD, including all relevant records, files, and papers, including OSHA 300 logs. The safety and health inspection will include an evaluation of the employer's efforts at adopting protective measures and its efforts toward the abatement of hazards relating to grain handling hazards. Attention will be paid to engulfment hazards and fire/explosion hazards created by combustible dust. Other hazards addressed will include, but are not limited to, noise, confined spaces, machine guarding, and falls, and any hazards in plain view. The inspection will be conducted during regular working hours or at other reasonable times, within reasonable limits, and in a reasonable manner, including the questioning privately of any employee or agent, and the taking of photographs, environmental samples, including the use of personal sampling equipment, and measurements, when necessary. The compliance officer's credentials will be presented, and the inspection and investigation will be commenced as soon as practicable after the issuance of this warrant and will be completed with reasonable promptness.

12. Any information, including photographs and environmental samples, obtained in connection with the inspection and which is designated to be a trade secret as

defined in 18 U.S.C.A. § 1905, shall be considered confidential as provided in section 15 of the Act, 29 U.S.C.A. § 664.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 10, 2017

Kevin Kolesa
Compliance Officer

Subscribed and sworn to before me in my presence on

this 10th day of April, 2017.

United States Magistrate Judge

Carrie Costantin
Acting United States Attorney
Eastern District of Missouri

/s/ Nicholas P. Llewellyn
Nicholas P. Llewellyn #43839MO
Assistant U.S. Attorney
111 So. 10th Street, 20th Floor
St. Louis, MO 63102
(314) 539-7637
Nicholas.llewellyn@usdoj.gov

OF COUNSEL:

Nicholas C. Geale
Acting Solicitor of Labor

Christine Z. Heri
Illinois Bar No. 6204656
Regional Solicitor
H. Alice Jacks
Associate Regional Solicitor
MO Bar No. 24482

Susan J. Willer
Attorney
Federal Bar No. 017798OK
Oklahoma Bar No. 017798

Two Pershing Square Building
2300 Main Street
Suite 1020
Kansas City, MO 64108
Tel: (816) 285-7260
Fax: (816) 285-7287

Attorneys for Secretary of Labor
United States Department of Labor